

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE**

NU-TECH PLASTICS ENGINEERING, INC.,

Plaintiff,

vs.

Case No. 02-075335-CK

GENERAL MOTORS CORPORATION,
a Delaware Corporation, and DELPHI
AUTOMOTIVE SYSTEMS USA, L.L.C., a
Delaware Limited Liability Corporation, d/b/a
DELPHI AUTOMOTIVE SYSTEMS, L.L.C.

Hon. Robert M. Ransom

Defendants.

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DEBORAH E. FORDREE (P49054)
SCHWARTZ LAW FIRM, P.C.
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**DELPHI and GENERAL MOTORS SECOND AMENDED
ANSWER TO COMPLAINT**

The defendant, Delphi Automotive Systems USA, L.L.C., a Delaware Limited Liability Corporation, d/b/a Delphi Automotive Systems L.L.C. (Delphi) and General Motors Corporation, a Delaware Corporation, by their attorneys, Lippert, Humphreys, Campbell, Dust & Humphreys,

P.C. states the following as it's answer to the plaintiff's Nu-Tech Plastics Engineering, Inc. (Nu-Tech) complaint.

1. The allegations in paragraph 1 are admitted.

2. The allegations in paragraph 2 are admitted.

3. The allegations in paragraph 3 are admitted.

4. Delphi and General Motors neither admit nor deny the allegations in paragraph 4 because these allegations state conclusions that are not factually supported, and no response to these allegations is made for this reason.

5. The allegations in paragraph 5 are admitted for jurisdictional purposes only.

COUNT I – BREACH OF CONTRACT

6. Delphi and General Motors re-allege their answer to paragraphs 1 through 5 inclusive.

7. Delphi and General Motors neither admit nor deny the allegations in paragraph 7, because specific facts pertaining to any contract are not alleged in this paragraph as required by MCR 2.113(f)(1). Delphi and General Motors state affirmatively that General Motors Corporation Automotive Components Worldwide issued its purchase order 8C934 for part no. 25160694 to Nutech Plastic Engineering. This purchase order was amended by Delphi Automotive Systems purchase order amendments N580000B issued August 17, 1998 and May 3, 1999.

8. Delphi and General Motors deny the allegations in paragraph 8.

9. Delphi and General Motors deny the allegations in paragraph 9.

10. Delphi and General Motors deny that either Delphi or General Motors is liable to the plaintiff for damages.

WHEREFORE, defendants, Delphi and General Motors deny that plaintiff is entitled to damages and requests that a judgment be entered in favor of Delphi and General Motors together with costs and attorney fees.

COUNT II – PROMISSORY ESTOPPEL

11. Delphi and General Motors re-allege their answer to paragraphs 1 through 10 inclusive.

12. Delphi and General Motors deny the allegations in paragraph 12.

13. Delphi and General Motors deny the allegations in paragraph 13.

14. Delphi and General Motors have no knowledge regarding state of mind of persons acting for and on behalf of the Nu-Tech, and cannot admit or deny these allegations for that reason.

15. Delphi and General Motors deny the allegations in paragraph 15.

WHEREFORE, defendants Delphi and General Motors deny all allegations of liability asserted by plaintiff against it and request that a judgment be entered in favor of Delphi and General Motors together with costs and attorney fees.

Dated: December 20, 2004.

LIPPERT, HUMPHREYS, CAMPBELL,
DUST & HUMPHREYS, P.C.
Attorneys for Defendants Delphi and GM

By: 

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NEW MATTER AND AFFIRMATIVE DEFENSES

Delphi and General Motors state the following as affirmative defenses to all claims made by the plaintiff.

1. Delphi, General Motors, and Nu-Tech made agreements for the sale and purchase of goods and services. The written agreements of the parties were and are integrated contracts. All rights and duties of the parties are expressed in these agreements, and no other terms and conditions apply to the transactions of these parties.

2. Delphi and General Motors move pursuant to MCR 2.116(C)(8) to dismiss Count I of plaintiff's complaint, Breach of Contract. Count I of the complaint fails to state of a cause action.

3. Delphi and General Motors move pursuant to MCR 2.116(C)(8) to dismiss Count II of plaintiff's complaint, Promissory Estoppel. Count II of the complaint fails to state a cause of action for promissory estoppel or misrepresentation.

4. Delphi and General Motors move pursuant to MCR 2.116(C)(10) to dismiss Count I of plaintiff's complaint, Breach of Contract. The undisputed material facts establish that plaintiff's claim that Delphi and General Motors breached any contract between the parties is without factual and legal merit

5. Delphi and General Motors move pursuant to MCR 2.116(C)(10) to dismiss Count II of plaintiff's complaint, Promissory Estoppel. The undisputed material facts establish that plaintiff's claim that Delphi and General Motors breached any contract between the parties is without factual and legal merit.

6. Delphi and General Motors move pursuant to MCL 2.116(C)(7) to dismiss Count I of plaintiff's complaint, breach of contract. The claims of Count I are barred by the statute of limitations. Uniform Commercial Code MCL 440.2725(1); MSA 19.2725(1).

7. Nu-tech lacks standing to assert the claims against Delphi and General Motors.

8. Nu-tech's claims are barred by the Economic Loss Doctrine.

9. To the extent that Nu-tech bases its claims on contracts issued by Delphi or General Motors such claims are barred by the Purchase Order Terms and Conditions.

WHEREFORE, defendants, Delphi and General Motors request that a judgment be entered in its favor together with costs and attorney fees.

LIPPERT, HUMPHREYS, CAMPBELL,
DUST & HUMPHREYS, P.C.
Attorneys for Defendants Delphi and GM

Dated: December 20, 2004.

By: 

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JURY TRIAL DEMAND

Delphi and General Motors request a trial by jury.

LIPPERT, HUMPHREYS, CAMPBELL,
DUST & HUMPHREYS, P.C.
Attorneys for Defendants Delphi and GM

Dated: December 20, 2004.

By: 

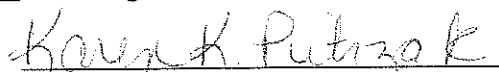
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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing document was served upon the attorneys of record of all parties in the above cause by mailing same to them at their respective business addresses as disclosed by the pleadings of record herein with postage fully prepaid thereon on December 20, 2004.

BY: ☒ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Fed Express
☐ Overnight Courier ☐ Other

Signature: 
Karen K. Pietrzak